SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

| STATE OF ARIZONA,

Plaintiff,

-vs-

STEVEN DEMOCKER,

Defendant. | Case No. P1300CR201001325

NOTICE SETTING SETTLEMENT CONFERENCE | **FILED**

DATE: 9-29-2011

1:17 O'Clock _P_.M.

SANDRA K. MARKHAM, CLERK
BY: _D_ , _____
Deputy |

HONORABLE DAVID L. MACKEY	**BY:** Cheryl Wagster Judical Assistant
DIVISION 1	**DATE:** September 26, 2011

On August 18, 2011, this matter was assigned to the Presiding Judge on a temporary limited basis for the appointment of a judge to conduct a settlement conference pursuant to Rule 17.4, *Ariz.R.Crim.P.*

The Court has considered the positions of the parties presented at the hearing on August 12, 2011, and has reviewed the pending issues as well at the Defendant's Request For Determination of a Judge, and Request For A Hearing re: Motion To Dismiss/Motion To Disqualify filed on September 16, 2011.

The Court finds that on August 12, 2011 the Defendant waived time to allow for a trial setting in February 2012 because the Defendant could not be ready for trial until then. While this Court continues to explore the options for a judge to conduct that trial starting in February 2012, this case remains assigned to the Honorable Warren Darrow. A judge **is** assigned to this case.

At the hearing on August 12, 2011, the Defendant agreed that all pending motions would be held in abeyance until a settlement conference could be conducted. Although the parties had hoped for a settlement conference in September, the Court was unable to arrange for a visiting judge within that time frame. In addition, upon reflection, this Judge is unwilling to conduct such a settlement conference as suggested because of the potential that this Judge may be the trial judge. The judge(s) conducting a settlement conference need to have a fresh perspective and substantial judicial experience as well as the ability to say everything that needs to be said to facilitate a resolution. The Court declines to relieve the Defendant from his agreement to hold pending motions in abeyance pending the settlement conference. The Court concludes that the delay in the scheduling of the settlement conference should not result in the delay of a February 2012 trial. Since the Motion to Dismiss for Prosecutorial Misconduct or Motion to Disqualify the Yavapai County Attorney's Office was one of the motions the Defendant agreed would be held in abeyance until a settlement conference could be conducted, the request to proceed with the resolution of that motion at this time is denied.

The Court notes that since the hearing on August 12, 2011, the Defendant filed a Motion To Modify Release Conditions. That motion was not pending at the time of the agreement to hold pending motions in abeyance; therefore, Judge Darrow will address that motion.

The Defendant suggests that he no longer agrees to participate in a settlement conference. Rule 17.4(a), *Ariz.R.Crim.P.* provides as follows:

> "**a. Plea Negotiations.** The parties may negotiate concerning, and reach an agreement on, any aspect of the case. At the request of either party, or sua sponte, the court may, in its sole discretion, participate in settlement discussions by directing counsel having the authority to settle to participate in a good faith discussion with the court regarding a non-trial or non-jury trial resolution which conforms to the interests of justice. Before such discussions take place, the prosecutor shall afford the victim an opportunity to confer with the prosecutor concerning a non-trial or non-jury trial resolution, if they have not already conferred, and shall inform the court and counsel of any statement of position by the victim. If the defendant is to be present at any such settlement discussions, the victim shall also be afforded the opportunity to be present and to state his or her position with respect to a non-trial or non-jury trial settlement. The trial judge shall only participate in settlement discussions with the consent of the parties. In all other cases, the discussions shall be before another judge or a settlement division. If settlement discussions do not result in an agreement, the case shall be returned to the trial judge."

The rule provides that the Court may order participation in a settlement conference. The rule only requires the consent of the parties if the settlement conference is to be conducted by the "trial judge." In this case, the trial judge is not going to be participating in the settlement conference. Therefore, Defendant's decision against participating in a settlement conference is of no consequence.

The Court has consulted with the prospective settlement conference judges and has determined that it is appropriate to appoint Retired Judge Ronald S. Reinstein and Retired Justice Michael D. Ryan to conduct a settlement conference pursuant to Rule 17.4, *Ariz.R.Crim.P.*

IT IS ORDERED pursuant to Rule 17.4, *Ariz.R.Crim.P.* the parties shall participate in a Settlement Conference and counsel having the authority to settle shall participate in a good faith discussion with the court regarding a non-trial or non-jury trial resolution which conforms to the interests of justice.

IT IS ORDERED appointing Retired Judge Ronald S. Reinstein and Retired Justice Michael D. Ryan to conduct a Settlement Conference pursuant to Rule 17.4, *Ariz.R.Crim.P.*

IT IS ORDERED setting the Settlement Conference before Retired Judge Ronald S. Reinstein and Retired Justice Michael D. Ryan on **November 15, 2011 at 10:00 a.m.** in the Chambers of the Presiding Judge, Room 300, Yavapai County Courthouse, Prescott, Arizona. The Court has reserved Room 302, the Jury Room, for the Defendant and his Counsel to meet and confer. The Court has reserved the Division 1 Courtroom for the State and Victims to meet and confer. The Settlement Conference will not be a public judicial proceeding; however, if an agreement is reached it will be considered by a Judge in open court.

IT IS ORDERED the parties shall reserve the rest of the day of November 15, 2011 and the morning of November 16, 2011 for the Settlement Conference.

IT IS ORDERED the Yavapai County Sheriff's Department shall transport Defendant Steven DeMocker to the Court for the Settlement Conference on the morning of **November 15, 2011 by 8:30 a.m.** in order to consult with Counsel prior to the start of the Settlement Conference and shall make the Defendant available throughout the days of November 15th and November 16th as directed by the Judge and Justice conducting the Settlement Conference.

IT IS ORDERED no later than **October 28, 2011 by noon** the State and the Defendant shall hand deliver to the Judicial Assistant of the Presiding Judge for distribution to Retired Judge Ronald S. Reinstein and Retired Justice Michael D. Ryan a **confidential** (not filed or exchanged among counsel) Settlement Conference Memorandum containing at a minimum, the following:

1. A list of a very limited number of specific and important documents from the file(s) that each side believes are important to a full understanding of the case.
2. A brief description of the case.
3. An analysis of potential results.
4. A summary of significant issues in dispute.
5. A description of settlement discussions to date.
6. A summary of Victim input regarding settlement.
7. A new or different suggestion(s) for resolving the case which may not have previously been communicated to the opposing party.

IT IS ORDERED setting a hearing before the Presiding Judge on **October 17, 2011 at 11:00 a.m.** to discuss the Settlement Conference on the record.

cc: Honorable Warren R. Darrow – Division Pro Tem B
        Honorable Judge Ronald S. Reinstein (Retired) – 1501 W. Washington, Phoenix, AZ 85007
        Honorable Justice Michael D. Ryan (Retired) – 1501 W. Washington, Phoenix, AZ 85007
        Jeffrey Paupore – Deputy Yavapai County Attorney
        Craig Williams – DeRienzo and Williams, 3681 N. Robert Road, Prescott Valley, AZ 86314 (e)
        Greg Parzych – 222 N. Central Avenue, Phoenix, AZ 85004
        Chris Moeser – Steptoe & Johnson, 201 E. Washington Street, Suite 1600, Phoenix, AZ 85004 (e)
        Victim Services
        Bill Williams – 3655 N. Taylor Drive, Prescott Valley, AZ 86314-8228
        YCSO - Transport